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PRIVILEGED AND CONFIDENTIAL SETTLEMENT COMMUNICATION:  
Subject to F.R. E. 408

Jim Collins  
Asst. Regional Counsel  
U.S. EPA Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

RE: **Response to EPA Past Cost Recovery Claim for the Anaconda Mine, Yerington, NV**

Jim:

We are in receipt of the EPA's revised cost recovery claim and cost summary report for the Anaconda Mine Site in Yerington, Nevada. After adjustments, EPA's claim for costs associated with Operable Units 001 through 07 is eight million five hundred and thirty-one thousand nine hundred (\$8,531,900.00) dollars. EPA's costs for OU-8 are associated with the orphan share at the site, costs attributable to the now defunct Arimetco, Inc. ARC recognizes that EPA is not asserting a claim for the agency costs associated with OU-8.

EPA and NDEP are actively engaged in negotiation of an NPL listing deferral. At the same time, NDEP and ARC are near completing negotiations on an agreement that will facilitate an expedited and efficient path forward for the entire site. With those negotiations, ARC stands poised to assume the remainder of the orphan share attributable to OU-8 as part of implementing a more holistic, site-wide remedy. If successful, this deferral path will avoid any further EPA Superfund spend on OU-8, a savings to the agency and taxpayers estimated at between thirty million (\$30,000,000.00) and forty-five (\$45,000,000.00) million dollars.

ARC has already made a substantial commitment of resources to the site. For OU-8 alone, ARC's direct costs are approximately \$8.9 million – already roughly four hundred thousand dollars more than EPA's costs for OUs 2 – 7. Beyond costs directly accounted for as OU-8, ARC has spent considerable funds investigating and performing response actions in OU-1 and other areas that overlap with and can be at least partially attributed to Arimetco operations. As is true for OU-8, a not-insubstantial portion of these costs is rightfully attributable to the Arimetco orphan share. At the beginning of EPA-required site response activities in 2005, there may have been some uncertainty as to the liability and appropriate RPs for OU-8. In that light, it may not have been unreasonable for ARC to undertake the site security, OM&M operations, and other matters it has attended to as stop-gap measures. It is now clear that OU-8 in fact represents an orphan share attributable to Arimetco. Nevertheless, ARC has expended considerable resources in managing OU-8. Based on what we now know about the sources of contamination in OU-8, it would be manifestly unjust to expect ARC to absorb its OU-8 and OU-1 costs, reimburse EPA for its past cost claims for OUs 1 – 7, and to then assume the orphan share for the remaining OU-8 remedy. ARC is not seeking cash reimbursement for its OU-8 expenditures but, equity requires that ARC be afforded relief and that EPA's cost claims not become effectively punitive.

ARC is committed to the deferral path and to implementing a site-wide remedy under Nevada lead. Because of that, we are also committed to trying to quickly resolve the EPA cost claims so that other elements of the process may progress. We have numerous issues and concerns with the cost detail and believe that when EPA orphan share guidance is equitably applied we would reach a conclusion much like ARC has argued above. However, those debates are complex, time consuming and poorly aligned with trying to bring this to a quick resolution. In the spirit of moving this forward, ARC is offering a total of five hundred thousand (\$500,000.00) dollars toward EPA costs for the site. This payment would settle all of EPA's past cost claims for the Site and resolve any and all EPA future costs associated with EPA's oversight of and participation in an NDEP led remedy implementation for the Site.

As further conditions of settlement, and subject to finalizing the deferral: (i) ARC will waive any claims under CERCLA Section 106(b)(2) for reimbursement of its past costs incurred in performing response actions under the 2005, 2007, and 2009 EPA administrative orders; (ii) EPA will terminate the existing orders; and (iii) EPA and ARC will execute an administrative settlement agreement and order on consent, providing ARC with a covenant not to sue for EPA past costs, waiving EPA future oversight costs, and providing contribution protection under Section 113(f)(2). In light of the considerations summarized above, such a settlement is in the public interest, and it will expedite CERCLA-protective response action at the site.



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